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# The right to education for humanity

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## Abstract

*This article begins by briefly surveying relevant international human rights law concerning the right to education and critiques its failure to guarantee children an education which is free from parental and/or religious domination. It then makes a positive case for guaranteeing children the right to 'education for humanity', meaning an education which equips them to be citizens of the world rather than captives of a particular creed, view of history or community tradition. It argues that conflicts could be reduced if schools were to focus on conveying an understanding of a wide range of beliefs and cultures. The piece then tests this position by considering the current education system in Northern Ireland, looking at six dimensions to the ongoing influence of religion on that system. It makes some suggestions for reform and ends with a more general proposal for a guaranteed right to education for humanity worldwide.*

## INTRODUCTION

International human rights law (IHRL) protects the right to education, but in a rather half-hearted fashion. To date the relevant legal standards have focused on giving everyone, especially children, the right of equal access to educational opportunities. They say much less about the type of education that should be provided. There is an expanding literature on the desirability of enforcing a right to education *about* human rights, but this too has a rather narrow focus, seeking only to broaden awareness of the actual and potential role of human rights in the world.<sup>1</sup> Part of the reason for this stunted evolution of the right to education is, we would submit, an undue deference to the dictat of parents in relation to how their children should be educated. This article argues that if IHRL is to keep pace with progressive thinking it needs to develop a right to 'education for humanity', where the goal of education is the development of 'citizens of the world', people who can play a full and active role in any society, regardless of the family or community setting into which they happen to be born. To be able to play this role, everyone will need to be equipped not just with communication skills, information technology awareness and mathematical and scientific knowledge, but also with an adequate understanding of the significance of

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1 See e.g. Gudmudur Alfredsson, 'The Right to Human Rights Education' in A Eide, C Krause and A Rosas (eds), *Economic, Social and Cultural Rights* 2nd rev edn (Martinus Nijhoff 2001) 273–88.

different beliefs, cultures and histories. Having made a general case in favour of a right to education for humanity by outlining the way in which the right to education is currently protected by IHRL and considering the appropriate role of religion in education, the article seeks to examine what such a right would entail in the specific context of Northern Ireland, a society emerging from a long period of conflict yet where the vast majority of children are still educated differently depending on the religious beliefs of their parents.

### The right to education in international human rights law

In proclaiming the Universal Declaration of Human Rights (UDHR) in 1948 the General Assembly of the UN stated that its goal was ‘that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms’.<sup>2</sup> This is a ringing endorsement of the idea that unless all people are made aware of the importance of respecting rights and freedoms, the foundations of justice and peace in the world will be at risk. The UDHR goes on, in Article 26(1), to confer on everyone the right to free ‘elementary and fundamental education’. Article 26(2) requires education to be:

. . . directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

The UDHR was not the first occasion on which an attempt had been made to require states to protect the right to education, but earlier attempts were confined to protecting the right to education of minorities. They focused on allowing those minorities to set up their own schools and to be educated in their own languages.<sup>3</sup> The UDHR’s provision was pre-empted a few months earlier by Article 12 of the American Declaration of the Rights and Duties of Man (ADHR) which asserted that every person has the right to an education, that it should be based on the principles of liberty, morality and human solidarity and that it should prepare the person to attain a decent life, raise his or her standard of living, and be a useful member of society.

So far so good. Unfortunately, the further development of the right to education was jeopardised by two developments. One was the tendency of standard-setting bodies to concentrate on a narrow definition of education, restricting it in effect to instruction provided by schools or colleges.<sup>4</sup> This side-lined the wider definition of education adverted to in Article 26(2) of the UDHR. The other was the enhanced focus which was given to Article 26(3) of the UDHR which states that ‘[p]arents have a prior right to choose the kind of education that shall be given to their children’. The prioritisation of parental rights over children’s rights was the result of a concession to certain states which did not want their ‘national’ approach to education to be undermined by a model imposed by an external authority. In this paper we submit that IHRL took a wrong turn at this juncture. It followed a path which effectively suppressed the right of children to be educated in a way which would best fit them for a free, tolerant and peaceful world. Instead, IHRL allowed the religious prejudices of parents to be dominant in their children’s education.

<sup>2</sup> The proclamation uses the word ‘end’ rather than ‘goal’; we have used the latter term for the sake of clarity.

<sup>3</sup> See generally Klaus Dieter Beiter, *The Protection of the Right to Education by International Law* (Martinus Nijhoff 2006) 431–5.

<sup>4</sup> Beiter explains that the right to education as protected by international instruments ‘refers primarily to education in its narrower sense’: *ibid* 19.

The UDHR's provisions on education were first given binding legal force when they were largely transposed into UNESCO's Convention against Discrimination in Education in 1960.<sup>5</sup> Article 5(1) of that convention provides that states parties agree that:

It is essential to respect the liberty of parents and, where applicable, of legal guardians . . . to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions.

Perhaps contrary to an average reader's initial expectations, the word 'own' in the fourth line of this provision is a reference to the parents' convictions, not their children's. Further force was given to the UDHR's approach by the two international covenants which were agreed in 1966. The first of these, the International Covenant on Civil and Political Rights (ICCPR), mentioned education only when repeating, in Article 18(4), the duty on states to respect the liberty (not the right) of parents and legal guardians 'to ensure the religious and moral education of their children in conformity with their own convictions'. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) contained a similar provision,<sup>6</sup> again confirming and expanding upon the content of UDHR Articles 26(1) and (2).<sup>7</sup>

Today the emphasis given to parental rights as regards their children's education should be seen as incompatible with the extensive international law on children's rights, a category of rights which the UDHR and the two Covenants barely recognised,<sup>8</sup> but which has since attracted much attention. The UN Convention on the Rights of the Child (CRC), agreed in 1989, makes no direct mention of a parent's right to control his or her child's education.<sup>9</sup> In fact, at least two of the CRC's provisions can be read as requiring children to be protected against such control. Article 2(1) requires states to ensure that rights in the CRC are granted to each child within their jurisdiction without discrimination of any kind, irrespective of his or her parent's or legal guardian's religion (or any other status). Article 29(1)(c) requires states to ensure that the education of a child is directed

5 This is binding on 101 states, including the UK but not Ireland, though no state has ratified it since 2013. Under Article 7 states parties must, in their periodic reports submitted to UNESCO's General Conference, provide information on the legislative and administrative provisions which they have adopted and other action which they have taken to comply with the Convention. These reports are considered by a Committee on Conventions and Recommendations, which produces one overall analytical summary report every six years, the most recent being in 2013. See UNESCO's *Right to Education: Comparative Analysis* (2006): <<http://unesdoc.unesco.org/images/0014/001459/145922e.pdf>>.

6 Article 13(3). This too refers to the parents' *liberty*, not *right*.

7 E.g. Article 13(2) introduces the concept of secondary education and says it must be made 'generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education'; it also refers to 'fundamental education' and says it must be 'encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education'. For an exhaustive analysis of Article 13 see Beiter (n 3) 459–569.

8 The only other reference to a child in the UDHR is in Article 25(2), which guarantees special care, assistance and social protection to all children. The ICCPR briefly mentions the rights of children to be protected, in Articles 14(1), 23(4) and 24; Article 12 of the ICESCR simply mirrors Article 25(2) of the UDHR. For a good overview of the relevant IHRL, see Manfred Nowak, 'The Right to Education' in Eide et al (n 1) 245–71.

9 Nor does the World Declaration on Education for All, issued in Jontiem, Thailand, in 1990 and subsequently endorsed by UNESCO: <<http://unesdoc.unesco.org/images/0012/001275/127583e.pdf>>. In the words of Eva Brems, 'Between 1966 (the ICCPR) and 1989 (the CRC), parents have lost the right to determine the religious education of their children. They are left with an accessory right to support the child in the exercise of his or her own right.' 'Inclusive Universality and the Child–Caretaker Dynamic' in Karl Hanson and Olga Nieuwenhuys (eds), *Reconceptualizing Children's Rights in International Development* (CUP 2013) 199–224, 209.

to the development of respect for the child's parents but also insists that it must be directed to the development of the child's own cultural identity, language and values and to respect for civilizations different from his or her own. A denial of these latter aspects of education constitutes a clear violation of the CRC, but this would be a breach of a duty rather than of a positive right. Nowak is correct when he stresses that:

*Only the children themselves seem to have no right to choose their own education* under present international law . . . [F]rom the point of view of modern educational theories considering the liberation (and non-indoctrination) of the child as the major aim of education, it is doubtful whether present international law affords sufficient protection to children to choose their kind of education by themselves.<sup>10</sup>

We do not argue, of course, that parents should not be allowed to have some influence over the religious beliefs of their children. We do assert that this influence should not be allowed to extend to the kind of school the children attend (if publicly funded) and nor should it be exercisable when the child is of a maturity to express his or her own informed choice as to what religious beliefs to hold.

Regrettably, and unnecessarily, a similar model was adopted when the Council of Europe drafted the European Convention on Human Rights (ECHR) in 1950. Delegates could not agree on the inclusion of social or economic rights in the ECHR and instead waited a further 17 months before including some of them in what is now known as the First Protocol to the ECHR. More particularly, the drafters were keen to ensure that the kind of indoctrination of children which had been practised by the Nazis should never again be repeated,<sup>11</sup> but on account of their controversial nature the rights in the First Protocol were framed in less categorical terms than most of the rights in the ECHR itself. Article 2 of the First Protocol (A2P1) stipulates, rather weakly, that:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

To date 45 of the 47 member states of the Council of Europe have ratified the First Protocol, but many of them have entered reservations or declarations relating to Article 2.<sup>12</sup> Macedonia's reservation states that 'the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions cannot be realised through primary private education', while Ireland's declaration states that A2P1 is 'not sufficiently explicit in ensuring to parents the right to provide education for their children in their homes or in schools of the parents' own choice'. The Netherlands has gone as far as declaring that 'the State should not only respect the rights of parents in the matter of education but, if need be, ensure the possibility of exercising those rights by appropriate financial measures'. By way of contrast, Germany, Moldova and Romania have all declared that A2P1 precludes additional financial obligations for the state in respect of philosophically or religiously oriented schools. The UK has accepted the principle in the second sentence of A2P1 'only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure'. Malta's declaration is similar but adds 'having regard to the fact that the population of Malta is overwhelmingly Roman Catholic'.

<sup>10</sup> Nowak (n 8) 262 (emphasis in the original).

<sup>11</sup> For an account of the relevant drafting process, see Ed Bates, *The Evolution of the European Convention on Human Rights* (OUP 2010) 62–63 and 67–68.

<sup>12</sup> For a full list and all details, see <[www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/009/declarations?p\\_auth=Bkj5Nt4P](http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/009/declarations?p_auth=Bkj5Nt4P)>.

Faced with the unhelpful wording of A2P1, first the European Commission (ECmHR) and later the European Court of Human Rights (ECtHR) felt textually constrained in the way they could interpret the right to education.<sup>13</sup> It cannot be claimed that the ECtHR has extended its much vaunted ‘dynamic or evolutive approach’<sup>14</sup> to the interpretation of A2P1. Van Bueren notes that ‘[t]he jurisprudence of the European Court has so far indicated that the negative phraseology has inherently limited any duty involving significant resource expenditure . . . The European Court’s approach under Article 2 of Protocol No 1 is [one] of quiet toleration rather than positive support’.<sup>15</sup> She adds that the ECtHR ‘appears reluctant to enter into any substantive analysis of the best interests of the child in relation to their educational entitlements’.<sup>16</sup> The ECHR, like the UDHR, does not protect children’s rights as such, so there is no internal inconsistency in the ECtHR’s reasoning in this regard, but, rather than run with the spirit of Articles 26(1) and (2) of the UDHR, the European enforcement bodies have preferred a narrow, content-neutral approach. Moreover, the inclusion of the right to education in the First Protocol to the ECHR acted as a deterrent to the drafters of the European Social Charter against including the right to education in the original version of that document in 1961.<sup>17</sup> The Revised Social Charter of 1996 is more fulsome but still says that the state’s duty to ensure that children have the education they need must take account of the rights of the children’s parents.<sup>18</sup>

The jurisprudence on A2P1 remains impoverished. The ECtHR has published a Factsheet concerning its case law on children’s rights<sup>19</sup> and another on parental rights,<sup>20</sup> but none on the right to education. When it has interpreted the phrase ‘philosophical convictions’ in A2P1 it has merely required them to denote:

. . . such convictions as are worthy of respect in a ‘democratic society’<sup>21</sup> . . . and are not incompatible with human dignity; in addition, they must not conflict with the fundamental right of the child to education, the whole of Article 2 of Protocol 1 being dominated by its first sentence.<sup>22</sup>

But in *X v UK*, where the ECmHR was asked to protect a conviction that integrated education was appropriate for pupils in Northern Ireland, whether they came from the Catholic or the Protestant community, it held that this did not qualify as a philosophical conviction for the purposes of Article 2.<sup>23</sup>

In our view the ECtHR has abdicated its responsibility to subject the parental right to have children educated in conformity with parental religious and philosophical convictions

13 For detailed analyses of the relevant jurisprudence, see Beiter (n 3) 158–72; D J Harris, M O’Boyle, E P Bates and C M Buckley, *Harris, O’Boyle and Warbrick: Law of the European Convention on Human Rights* 3rd edn (OUP 2014) 906–19; B Rainey, E Wicks and C Ovey, *Jacobs, White and Ovey: The European Convention on Human Rights* 6th edn (OUP 2014) 520–36.

14 See e.g. Harris et al (n 13) 8–10; Rainey et al (n 13) 73–9.

15 Geraldine Van Bueren, *Child Rights in Europe* (Council of Europe Publishing 2007) 152–3.

16 Ibid 156; see too Ursula Kilkelly, *The Child and the European Convention on Human Rights* (Ashgate 1999) 68. See too the position under the OSCE’s standards, referred to by Craig, in this issue of the NILQ, p 460 (n 60).

17 The Charter, in Article 10, refers only to the right to vocational education.

18 Article 17(1)(a).

19 Last updated in April 2016: <[www.echr.coe.int/Documents/FS\\_Childrens\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Childrens_ENG.pdf)>.

20 Last updated in February 2016: <[www.echr.coe.int/Documents/FS\\_Parental\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Parental_ENG.pdf)>.

21 Citing *Young, James and Webster v UK* (1981) 4 EHRR 38, para 63.

22 Citing *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1979–80) 1 EHRR 711, para 52.

23 *X v UK* App No 7782/77, 14 DR 179 (1978). In the *Kjeldsen* case (n 22), the ECtHR found that a parental conviction that children should not be given compulsory sex education at school was also unworthy of protection.

to limitations based on the need to ensure that children are educated in accordance with their own religious and philosophical convictions or with the tenets of humanitarianism. The rationale for prioritising parental convictions is that the state must not be allowed to indoctrinate children with particular ideologies, but it does not follow that parental convictions should be allowed to contradict their children's own convictions, assuming the children are mature enough to make an informed decision on the issue,<sup>24</sup> or that a parental conviction that their children should be educated in a way which promotes principles of humanitarianism and human rights should not be respected. We agree with the 'three-step model' devised by Eva Brems to help deal with conflicting rights, in particular, conflicts between a child's right to religious freedom and a child's parents' right to provide direction to their child in the exercise of his or her religious freedom.<sup>25</sup> In such situations it is appropriate to allow core rights to prevail over peripheral rights, which in this context means giving priority (if the child is mature enough) to the child's right, since his or her autonomy as a human being is at stake. But we go further in submitting that, contrary to what is required from states by the UDHR and the ICESCR, the ECtHR has failed to insist that states must promote 'the full development of the human personality', 'the strengthening of respect for human rights and fundamental freedoms' and the promotion of 'understanding, tolerance and friendship among all nations, racial or religious groups'. The promotion of those values can only enhance the autonomy of a child. We sum up this failure as a violation of the right to education for humanity.<sup>26</sup> We strongly endorse the view of Abbott, who maintains that in this increasingly globalised world it is more important than ever that education should champion humanitarian values.<sup>27</sup>

Our championing of the concept of education for humanity is based on our opinion, consonant with Article 26(2) of the UDHR, that educating children about all nations, races and religions, and promoting the values of tolerance and friendship among all people, is a way of helping to maintain global peace. An approach which emphasises religious pluralism will expose children to the doctrines, practices and achievements of many different groups and will help convey an understanding of the benefits which can flow from groups respecting one another's belief systems. Just as ignorance breeds distrust, so understanding breeds trust. Add to this the civilising influence of education in humanitarian principles such as 'give help where you can'<sup>28</sup> and in philosophical tenets

24 A point made by Mr Kellberg in his separate concurring opinion when the *Kjeldsen* case was at the ECmHR, and also by Van Bueren (n 15) 163–4, citing Article 5 of the CRC, which obliges states to respect the rights of parents and guardians to provide appropriate direction and guidance in the exercise by the child of the rights recognised in the CRC 'in a manner consistent with the evolving capacities of the child'. See too Laura Lundy, 'Family Values in the Classroom, Recording Parental Wishes and Children's Rights in State Schools' (2005) 19 *International Journal of Law, Policy and the Family* 346.

25 Brems (n 9) 201–12.

26 By education for humanity we mean more than just education for every human being, which appears to be what Trevors and Saier are stressing at <[www.ncbi.nlm.nih.gov/pmc/articles/PMC3252885/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3252885/)> and what the NGO Education for Humanity is aiming for at <[www.eforhusa.org](http://www.eforhusa.org)>. Also, we are not suggesting as radically different an approach to the acquisition of knowledge as that suggested by Will Stanton in *Education Revolution* (Will Stanton 2015).

27 Anita Abbott, 'Education for Humanity: A Challenge within Globalization' (2007) 5 *International Journal of the Humanities* 223. See too Mike Seymour et al, *Educating for Humanity: Rethinking the Purposes of Education* (Routledge 2016), especially the 'Introduction'.

28 The UN Office for the Coordination of Humanitarian Affairs lists the four main humanitarian principles as: (1) addressing human suffering wherever it is found; (2) remaining neutral in conflicts; (3) being impartial when protecting life, health and respect; and (4) maintaining independence from political, economic, military or other objectives. See <[https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples\\_eng\\_June12.pdf](https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf)>.

such as ‘treat others as an end, not as a means to an end’<sup>29</sup> and the result is likely to be a cohort of young people who can keep their personal beliefs in perspective while becoming denizens not just of their birthplace but of the globe. We accept, of course, that the globe is radically diverse, and that there is often profound disagreement on what is ‘fundamental’, but we maintain that, like human rights, the values of tolerance and respect should be considered to have universal application. No child should be denied an education in the worth of those values or obstructed in his or her opportunity to become an autonomous individual who can, if so wishing, shake off the trappings of a domestic heritage and live freely as a citizen of the world. IHRL needs to wake up to the obligation on states to empower their inhabitants, especially their children, in this vogue. As already noted, this positive obligation, or something very like it, already exists under Article 13(1) of the ICESCR, but it has not been adequately promoted by the Committee which monitors compliance with that Covenant.<sup>30</sup> A step-change is needed in this regard.

### The role of religion in education

A religious belief is a very important part of many people’s lives and IHRL is fully justified in protecting people’s freedom to hold and to practise their own religious beliefs. The ECtHR sees the manifestation of religious belief as part of the *forum internum*, with which no state should interfere except when the interference is for a legitimate aim, necessary in a democratic society and proportionate. Parents have ample opportunity within the home to impress upon their children the religious beliefs which they want them to adopt,<sup>31</sup> but when it comes to education provided by schools, especially if those schools are funded by the state, parental rights over the religious beliefs of their children should hold no sway. Nowak reminds us that ever since the nineteenth century liberalism has advocated state intervention in the education of children ‘for the purpose of reducing the dominance of the Church and of protecting the rights of children against their own parents’.<sup>32</sup> Given the historical importance of religion in the world, and its contemporary salience in the context of Islamic fanaticism, we support the idea that all children at state-funded schools should be *taught about* religious beliefs, but we hold that in no such school should children be *instructed to adopt* any particular religious beliefs. Such *confessional* teaching should be restricted to the home, to the community and to the churches.

The Constitution of the USA famously provides, in the first words of its First Amendment, ratified in 1791, that ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof’. In the course of the last 225 years these words have been interpreted in a way which severely restricts the provision of religious education within publicly funded schools. In *Illinois v Board of Education* (1948) the US Supreme Court found a breach of the First Amendment when a school district allowed ministers of religion to enter school premises to give religious instruction to children.<sup>33</sup> This practice was denounced, with one dissenting voice, as a clear example of impermissible public aid to religion. Shortly afterwards, in *Zorach v*

29 This is what Immanuel Kant calls a ‘categorical imperative’; see e.g. Alan Montefiore, ‘Kant and the Categorical Imperative’ (2009) 2(5) *Think* 75–82.

30 The Committee’s General Comment No 13 (1999) devotes just two of its 60 paragraphs to Article 13(1) and adds little to its normative force: <[www.refworld.org/docid/4538838c22.html](http://www.refworld.org/docid/4538838c22.html)> accessed 6 July 2016.

31 See Paul Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (CUP 2005) 165–82. Nowak (n 8) 262.

32 Nowak (n 8) 247–8, citing John Stuart Mill, the Constitution of the German Empire of 1849 (not 1949 as in Nowak’s text) and the Soviet Constitution of 1936.

33 333 US 203.



*Clauson* (1952) the same court held that it was not a breach of the Constitution to release students to attend out-of-school religious instruction,<sup>34</sup> but subsequent decisions have widened even further the ban on religious conduct anywhere within a school. Even the conservative Rehnquist court held, in *Lee v Weisman* (1992), that a school is not permitted to invite a minister of religion to deliver a prayer at a graduation ceremony.<sup>35</sup> The underlying principle in these cases is that the First Amendment precludes any state endorsement of religious belief. While this does not extend to prohibiting students from organising their own religious meetings on school premises,<sup>36</sup> or from receiving financial support for their society's activities in the same way as other societies would do,<sup>37</sup> it does mean that education in publicly funded schools has to be entirely secular. Attempts to brand such secularism as itself a form of religious belief have been rejected by the Supreme Court.<sup>38</sup> There is not yet any authoritative judicial decision on whether it is a breach of the First Amendment that since 1954 the 'Pledge of Allegiance', which is often formally recited within school classrooms, has included the phrase 'one Nation *under God*'. But the Supreme Court has made it clear that no school child can be compelled to recite any part of this pledge if he or she does not wish to do so.<sup>39</sup> The right not to be compelled to speak certain words is protected by another clause in the same First Amendment: 'Congress shall make no law . . . abridging the freedom of speech.' This is taken to include the negative right *not* to speak.

The American approach to religion in schools does not, of course, preclude the teaching in schools of the role of religion in societies past and present. It would be hard to study the Reformation, for example, without being aware of the different theological beliefs of the protagonists involved. It would be equally impossible to understand the conflicts in the Middle East without being aware of the different religious views of Jews, Christians, Shias, Sunnis, Yazidis etc. Nevertheless, a secular approach does mean that a 'separate but equal' approach is not acceptable. As Habashi has put it, such an approach 'accommodates students' cultures but does not necessarily support the goals of harmony and tolerance detailed in Article 29 of the UNCRC'.<sup>40</sup> Rather than providing an opportunity for students to learn about other religions, it 'restricts their freedom to acquire knowledge and thereby reduce social prejudice'.<sup>41</sup> Habashi argues convincingly for a pluralistic approach to religious education which would treat it as a social science. In so far as the CRC and ECHR can be read as contradicting such an approach, by allowing parents the right to insist that their children must receive publicly funded instruction in how to adhere to one particular religion, those treaties need to be revisited.<sup>42</sup>

34 343 US 306 (6 v 3).

35 505 US 577 (5 v 4).

36 *Westside School District v Mergens* 496 US 226 (1990) (8 v 1).

37 *Good News Club v Milford Central School* 533 US 98 (2001) (6 v 3).

38 *Abington School District v Schempp* 374 US 203 (1963) (8 v 1).

39 *West Virginia State Board of Education v Barnette* 319 US 624 (1943) (6 v 3). This was a case taken by Jehovah's Witnesses.

40 Janette Habashi, 'Intersections of Education and Freedom of Religion Rights in the UNCRC and in Practice' in Beth Blue Swadener et al (eds), *Children's Rights and Education: International Perspectives* (Peter Lang 2013) 236–46, 239–40. For Article 29 see Beiter (n 3) 119–20.

41 Ibid 240, citing U Kilkelly, 'The Child's Right to Religious Freedom in International Law: The Search for Meaning' in M A Fineman and K Worthington (eds), *What is Right for Children? The Competing Paradigms of Religion and Human Rights* (Ashgate 2009) 243–67.

42 Ibid 244.

Carolyn Evans has also called for a more enlightened attitude within IHRL in this context.<sup>43</sup> She too speaks of the need for 'plural religious education' and urges states to follow the Toledo Guiding Principles if they really want to adopt a rights-consistent approach to the matter. These Principles, on teaching about religions and beliefs in public schools, were drafted in 2007 by an Advisory Council of Experts within the Organization for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw.<sup>44</sup> Written at a high level of abstraction, they *imply* support for a pluralistic approach. Evans describes them as sophisticated and possibly more useful for states than the pronouncements of the UN Human Rights Committee and the ECtHR.<sup>45</sup> The principles are focused on teaching *about* religions and beliefs and do not attempt to address the many other issues involving religion and education. Key values promoted by the principles are inclusivity, historical awareness and 'multi-perspectivity'. Particularly helpful is the list of learning outcomes which the principles suggest should be associated with teaching about religions. These include, as top priorities, 'attitudes of tolerance and respect for the right of individuals to adhere to a particular religion' and 'an ability to connect issues relating to religions and beliefs to wider human rights issues . . . and the promotion of peace'.

To date IHRL has permitted states to compel students to attend classes about religion provided the information in question is conveyed neutrally and objectively. That much was asserted by the Grand Chamber of the ECtHR in *Folgerø v Norway* in 2007.<sup>46</sup> On the facts of that case, however, the court found that the instruction was not being delivered in an adequately neutral fashion, as it was dominated by a Christian perspective, and nor were there adequate opt-out provisions. In the course of its judgment the Grand Chamber repeated that:

. . . the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner.<sup>47</sup>

At the same time:

. . . the second sentence of Article 2 of Protocol No 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education.<sup>48</sup>

It follows from these statements that, if states can provide education about religion which is neutral and objective, they should be allowed to deny parents (or children) the right to be exempted from such education. An exemption from such education should be no more permissible than it would be from education about elementary mathematics or language. Unless they are exposed to at least a basic grounding in what religions are and

43 Carolyn Evans, 'Religious Education in Public Schools: An International Human Rights Perspective' (2008) 8 HRLR 449.

44 They are available at <[www.osce.org/odihr/29154?download=true](http://www.osce.org/odihr/29154?download=true)>. COSE has 56 member states, including most European States, Canada, the US and some former Soviet Republics. The Advisory Council comprises 12 experts drawn from 12 different member states.

45 See Evans (n 43) 472. Appendix III (pp 91–108) of the published principles contains details of two relevant complaints lodged against Norway at the UN Human Rights Committee and one decision of the ECtHR in *Zengin v Turkey* App No 1448/04, 9 October 2007.

46 App No 15472/02, judgment of 29 June 2007. The UN Human Rights Committee came to essentially the same conclusion in a separate complaint relating to the same educational programme: *Leirvåg v Norway* (UN Human Rights Committee, CCPR/C/82/D/1155/2003, 23 November 2004) 385–99: <[www.ohchr.org/Documents/Publications/SDecisionsVol8en.pdf](http://www.ohchr.org/Documents/Publications/SDecisionsVol8en.pdf)>.

47 Ibid para 84(h).

48 Ibid para 89.

how they vary, children will be able to claim, justifiably, that they are being deprived of a crucial aspect of education, which itself is a violation of the first sentence of A2P1 to the ECHR as well as of a variety of UN human rights treaties. Needless to say, if parents, families and communities wish to supplement the state's provision of basic religious education with more specialised instruction in one particular religion, this should be permissible, at least during the period when the child is not mature enough to decide for him- or herself whether he or she wishes to be subjected to such specialised instruction. A more general form of religious education should be designed to enable children to take their place as citizens of the world rather than of any particular locality. In that sense it is appropriate to designate this 'education for humanity'. We think the time has come for the courts and committees which enforce IHRL to declare clearly that education for humanity is a basic entitlement of every person.

### Education in Northern Ireland

We now turn to the benefits which adopting a right to education for humanity could bring to a jurisdiction such as Northern Ireland, wracked as it is by sectarian differences and the legacy of a conflict between 1969 and 1998 which cost more than 3600 lives. The conflict was not primarily a religious one, more an ethno-political one between groups who fervently believed Northern Ireland should be part of a united Ireland and others who believed it should remain part of the UK. The former tended to be Catholic Christians while the latter tended to be Protestant Christians. Under the law of Northern Ireland, religious organisations are still guaranteed a strong influence over the education system in a variety of ways. We now examine six dimensions to that influence.

#### (A) THE ROLE OF RELIGIONS IN THE GOVERNANCE AND MANAGEMENT OF SCHOOLS

Northern Ireland school categories are not labelled in a way that makes the involvement of religious organisations in their governance and management particularly clear. While the total list of categories is long and malleable,<sup>49</sup> three of them dominate the educational landscape. They are controlled schools, voluntary schools and integrated schools.<sup>50</sup>

Controlled schools are supposed to provide a non-denominational state education, but there is a clear tendency towards Protestantism. This is explicable by the predominant role of the main Protestant churches<sup>51</sup> in their governance and management. Until 1 April 2015, controlled schools were owned, funded and managed by five regional Education and Library Boards<sup>52</sup> through Boards of Governors (school Boards).<sup>53</sup> Education and Library Boards were dissolved on that date<sup>54</sup> and substituted by the

49 As well as those examined in our text, the Department of Education uses the categories of Irish Medium school (a type of maintained school), special needs schools and independent schools. See 'Annual Enrolments at Grant-Aided Schools in Northern Ireland 2015/16: Basic Provisional Statistics' *Department of Education Statistical Bulletin* 8/2015 (10 December 2015) 11–12. Others have adopted a different seven-stranded taxonomy, e.g. Laura Lundy, Gráinne McKeever and Viviane Treacy, 'Education Rights' in Brice Dickson and Brian Gormally (eds), *Human Rights in Northern Ireland: The CAJ Handbook* (Hart 2015) 484–6.

50 The dominance of these sectors is such that 39 per cent of pupils in Northern Ireland attend controlled schools, 51 per cent attend voluntary schools and 5 per cent attend integrated schools, according to Caroline Perry, 'Education System in Northern Ireland' (NI Assembly Research and Information Service, 8 August 2016): <[www.niassembly.gov.uk/globalassets/documents/raise/publications/2016–2021/2016/education/4416.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016–2021/2016/education/4416.pdf)>.

51 Namely, the Church of Ireland (Anglican), the Presbyterian Church in Ireland and the Methodist Church in Ireland.

52 Education and Libraries (NI) Order 1986, article 3 (repealed).

53 Ibid article 10.

54 Education Act (NI) 2014, s 3(1).

Education Authority (the Authority), which is now the overarching management body for controlled schools.<sup>55</sup> It is the Authority which makes provision for the management of each controlled school by a school Board.<sup>56</sup> It is also the duty of the Authority to contribute towards 'the spiritual, moral, cultural, intellectual and physical development of the community by securing that efficient primary education and secondary education are available to meet the needs of the community'.<sup>57</sup>

At Authority level, four of the 12 members appointed by the Department of Education (the Department) must appear to represent the interests of transferors of controlled schools.<sup>58</sup> Transferors are the trustees or other persons by whom a school has been transferred to a former or current state education authority, including their representatives or successors.<sup>59</sup> Transferors are typically representatives of the main Protestant churches who during the early twentieth century transferred schools to controlled status in exchange for public funding and managerial positions.<sup>60</sup> In addition, one of the 12 members appointed to the Authority by the Department must appear to represent the interests of controlled *grammar* schools.<sup>61</sup> There is stronger, sectionally majoritarian, transferor representation required by law on the school Boards of controlled schools. Where there are nine voting members appointed to the Board of a controlled primary or secondary school, four of those members must be nominated by transferors or their representatives.<sup>62</sup> This is significant because the powers enjoyed by school Boards are wide ranging.

Voluntary schools are publicly funded but privately owned. They may have a denominational ethos, which amounts to running all school business consistently with a particular set of religious beliefs. The management structures for these schools continue to be sectionally dominated by their trustees, who are normally religiously affiliated, albeit there is now a greater role for Departmental influence than there was in the past. Voluntary *maintained* schools are under the ownership and management of the Catholic Church through the Council for Catholic Maintained Schools (CCMS), but they can avail of public funding for their running costs from the Authority and for capital building works from the Department.<sup>63</sup> Four of the 12 members of the Authority appointed by the Department must appear to represent the interests of trustees of maintained schools.<sup>64</sup> Their school Boards are also sectionally dominated by the influence of the Catholic Church, though since 1993 they have been allowed to receive public funding if the school Boards agree to reduce this dominance.<sup>65</sup> However, given that Departmental and Authority nominees are appointed only after consultation with existing governors, the influence of the Catholic Church in most voluntary schools has been 'largely unaffected'

55 Ibid s 1(1).

56 Education and Libraries (NI) Order 1986, article 10, as amended by the Education Act (NI) 2014, Sch 3, para 1(1).

57 Ibid article 5(2), as amended by the Education Act (NI) 2014, Sch 3, para 1(1).

58 Education Act (NI) 2014, Sch 1, para 2(1)(c)(i). In addition to these 12 Departmental appointments, the Authority consists of a chair and eight political members.

59 Education and Libraries (NI) Order 1986, article 2, as amended by the Education Act (NI) 2014, Sch 3, para 1(1).

60 Laura Lundy, *Education: Law, Policy and Practice in Northern Ireland* (SLS 2000) 66.

61 Education Act (NI) 2014, Sch 1, para 2(1)(c)(v).

62 Education and Libraries (NI) Order 1986, Sch 4, paras 2(2)(a) and 3(2)(a).

63 Education Reform (NI) Order 1989, articles 141–6 and Sch 8; Education and Libraries (NI) Order 2003.

64 Education Act (NI) 2014, Sch 1, para 2(1)(c)(ii).

65 Education and Libraries (NI) Order 1986, article 11, as amended by the Education and Libraries (NI) Order 1993, article 28. Under Sch 5 to the 1993 Order the representation of the Catholic Church typically reduces from 6 out of 10 to 4 out of 9.

by that trade-off.<sup>66</sup> Voluntary *grammar* schools are also funded by the Department,<sup>67</sup> but are self-governing and select their pupils based on perceptions of their academic ability. At Authority level, only one of the 12 members of the Authority appointed by the Department must appear to represent the interests of voluntary grammar schools.<sup>68</sup> This means that the selection process could be contentious because a significant proportion of these schools adopt a Protestant ethos. Most of their school Boards are sectionally dominated by their nominating trustees or denominational authorities to a greater or lesser extent, depending on whether they receive full capital funding from the state,<sup>69</sup> but the schools' trustees remain sectionally dominant either way.

Integrated schools aim to facilitate the education together of Protestant and Catholic pupils.<sup>70</sup> At Authority level, like voluntary grammar schools, only one of the 12 members of the Authority appointed by the Department must appear to represent the interests of integrated schools.<sup>71</sup> The school Boards of *controlled* integrated schools are not dominated by guaranteed religious influences, but there is still some influence. Two-sevenths of their school Boards are normally reserved for religious representatives: one-seventh nominated by the transferors and superseded managers of controlled schools in the locality served by the school<sup>72</sup> and one-seventh nominated by the nominating trustees of voluntary maintained schools in the Roman Catholic diocese in which the school is situated.<sup>73</sup> In practice, the Catholic Church refuses to make these appointments<sup>74</sup> and, instead, the Authority appoints persons appearing to be committed to the continuing viability of the school as a controlled integrated school.<sup>75</sup> It seems to us that a commitment to the continuing viability of the school as a controlled integrated school is a more sensible criterion for appointment than any particular religious affiliation. We think it could operate sensibly as one of the requirements for all appointments to the school Boards of controlled integrated schools. In contrast, the school Boards of *grant-maintained* integrated schools do not have any guaranteed positions for religiously appointed representatives reserved by law. Instead, positions are reserved for so-called 'foundation governors',<sup>76</sup> that is, persons by whom the initial proposal to acquire grant-maintained integrated school status was submitted,<sup>77</sup> or persons appointed to the role by the school's instrument of government.<sup>78</sup> These school Boards must use their best endeavours to ensure that 'the

66 Lundy (n 60) 70.

67 Education Reform (NI) Order 1989, articles 60–1, as amended by the Education and Libraries (NI) Order 2003.

68 Education Act (NI) 2014, Sch 1, para 2(1)(c)(iv).

69 Education and Libraries (NI) Order 1986, Schs 6–7. Nominating trustees are provided for in a bespoke scheme of management which must be approved by the Department: see articles 9A–D of the 1986 Order, inserted by the Education Reform (NI) Order 1989, article 123.

70 Education Reform (NI) Order 1989, article 64(1).

71 Education Act (NI) 2014, Sch 1, para 2(1)(c)(iii). The last of the 12 Departmental appointments to the Authority must appear to represent the interests of Irish Medium schools.

72 Education and Libraries (NI) Order 1986, Sch 4, para 5(1)(c), as amended by the Education Reform (NI) Order 1989, article 89.

73 Ibid, Sch 4, para 5(1)(d), as amended by the Education Reform (NI) Order 1989, article 89.

74 Lundy (n 60) 283–4.

75 Education and Libraries (NI) Order 1986, Sch 4, para 6, as amended by the Education Reform (NI) Order 1989, article 89, and the Education Act (NI) 2014, Sch 3, para 1(1).

76 Education Reform (NI) Order 1989, article 66 and Sch 5, para 2(1). Other members of the Board consist of Departmental nominees, parents of registered pupils and teachers.

77 Ibid article 66 and Sch 5, para 2(2)(a).

78 Ibid article 66 and Sch 5, para 2(2)(b).

management, control and ethos of the school are such as are likely to attract to the school reasonable numbers of both Protestant and Roman Catholic pupils'.<sup>79</sup>

This overview illustrates the startlingly irregular nature of religious involvement in the governance of schools in Northern Ireland. All of the structures, except those relating to grant-maintained integrated schools, feature guaranteed avenues of influence for religious organisations. That influence is very often sectionally majoritarian in nature. From the perspective of a state-led right to education for humanity, the most problematic aspect of these models is that sectional religious influence over educational establishments persists regardless of the level of public funding they are provided with and, in some instances, regardless of the fact that legal ownership now lies with the state. It has been suggested that the stakeholder model in use at present is likely to require reconfiguration 'if schools begin to share more',<sup>80</sup> pursuant to the governmental initiatives explored later in this paper. It seems to us that the basic requirements of a right to education for humanity dovetail with the recommendations of Smith and Hansson regarding reform in this area. They have suggested that there is a case for greater diversity in the governance of all schools 'through revised arrangements for membership based on individual merit rather than representative rights of sectoral interests'.<sup>81</sup> We would prefer a situation where no religious organisation is entitled to nominate any individuals as governors of a school Board and where no members of the Education Authority are appointed because of their support for either Catholicism or Protestantism.

#### (B) THE ROLE OF RELIGIONS IN DETERMINING THE RELIGIOUS EDUCATION CURRICULUM IN SCHOOLS

The legal foundations of Northern Ireland's state school system originally adopted a secular model which prohibited religious education but provided for 'moral' education.<sup>82</sup> The current model, whereby both religious education and collective worship are required by law in all grant-aided schools,<sup>83</sup> resulted from a series of agitations which took place over a number of decades between the state and Northern Ireland's Christian religious organisations.<sup>84</sup> Consequently, the current legal framework provides, in particular, that controlled schools must provide religious education 'based upon the Holy Scriptures according to some authoritative version or versions thereof but excluding education as to any tenet distinctive of any particular religious denomination' and likewise as regards collective worship.<sup>85</sup> Non-controlled integrated schools are under the same obligation, while controlled integrated schools are permitted to provide separate denominational

79 Ibid article 66(2).

80 Caroline Perry, 'School Governors' (Northern Ireland Assembly Research and Information Service, August 2011) 16: <[www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2011/Education/8611.pdf](http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2011/Education/8611.pdf)>.

81 Alan Smith and Ulf Hansson, 'A Review of Policy Areas Affecting Integration of the Education System in Northern Ireland' (UNESCO Centre Ulster University, September 2015) 47: <[www.ief.org.uk/wp-content/uploads/2011/08/Integrated-Education-Scoping-Paper.pdf](http://www.ief.org.uk/wp-content/uploads/2011/08/Integrated-Education-Scoping-Paper.pdf)>.

82 Education Act (NI) 1923, ss 26–8. Prior to the partition of Ireland in 1921, a similar attempt by the state to establish a non-denominational education system failed in 1831 as a result of opposition from the Protestant and Catholic churches. See John Darby and Seamus Dunn, 'Segregated Schools: The Research Evidence' in R D Osborne, R J Cormack and R L Millers (eds), *Education and Policy in Northern Ireland* (Policy Research Institute 1987) 85.

83 Education and Libraries (NI) Order 1986, article 21(1); Education (NI) Order 2006, article 5(1)(a).

84 'Introduction: Ministry/Department of Education Archive' (Public Record Office of Northern Ireland, November 2007) 12–17: <[www.nidirect.gov.uk/sites/default/files/publications/education-archive.pdf](http://www.nidirect.gov.uk/sites/default/files/publications/education-archive.pdf)>.

85 Education and Libraries (NI) Order 1986, article 21(2).

religious education and collective worship as a means of ensuring pupils from both Protestant and Catholic backgrounds can be accommodated.<sup>86</sup>

Fortunately, legislation also stipulates that all religious education and collective worship required by law must be arranged so that 'the school shall be open to pupils of all religious denominations for education other than religious education'<sup>87</sup> and that 'no pupil shall be excluded directly or indirectly from the other advantages which the school affords'.<sup>88</sup> It further provides the option for parents to have their children wholly or partly excused from all religious education and collective worship.<sup>89</sup> Although pupils are denied any guaranteed opportunity to express their views in this regard,<sup>90</sup> existing research has not revealed any conflict between young people and parents in relation to opt-out decisions.<sup>91</sup> These protections are significant because the current core syllabus for religious education in all grant-aided schools was prepared by a drafting group composed of the four main Churches in Northern Ireland,<sup>92</sup> who satisfied the insubstantial requirement of 'having an interest in the teaching of religious education in grant-aided schools'.<sup>93</sup> The non-involvement of other faith communities has served to convince many people that religious education is treated as 'a confessional subject',<sup>94</sup> a view reinforced by the fact that all other subjects in the Northern Ireland curriculum are developed and reviewed by government-appointed working parties.<sup>95</sup>

Unsurprisingly, based on the composition of its drafting group, the current religious education curriculum specified by the Department of Education<sup>96</sup> is dominated by Christian learning objectives, bar one 'Key Stage 3' objective about 'world religions' that is commendably designed to introduce school pupils aged 11–14 to two religions other than Christianity 'in order to develop knowledge of and sensitivity towards the religious beliefs, practices and lifestyles of people from other religions in Northern Ireland'.<sup>97</sup> Schools are permitted to build upon the revised core syllabus 'in a way that suits their pupils and the ethos of the school', which provides scope for additional material on world religions 'or any other [religious education] related subject matter'.<sup>98</sup> Richardson suggests, however, that the reality for many teachers is that 'they feel that there is too much already in the syllabus and that any suggestion of teaching additional material is out of the question'.<sup>99</sup>

86 Education Reform (NI) Order 1989, article 13(1)(b); Education (NI) Order 2006, article 11(1)(b).

87 Education and Libraries (NI) Order 1986, article 21(4)(a).

88 Ibid article 21(4)(b).

89 Ibid article 21(5).

90 It has been suggested that this gives rise to a conflict with the UNCRC, Article 12, which requires adults to take account of the views of children in all matters affecting them. See, e.g. Lundy (n 60) 153.

91 Alison Mawhinney et al, 'Opting Out of Religious Education: The Views of Young People from Minority Belief Backgrounds' (Queen's University Belfast 2010) 62: <[www.qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Fileupload,485911,en.pdf](http://www.qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Fileupload,485911,en.pdf)>.

92 Namely, the Catholic Church in Ireland, the Church of Ireland (Anglican), the Presbyterian Church in Ireland and the Methodist Church in Ireland.

93 Education (NI) Order 2006, article 11(2)(a).

94 Norman Richardson, *Sharing Religious Education: A Brief Introduction to the Possibility of an Inclusive Approach to Religious Education in Northern Ireland* (Christian Education Publications 2014) 3.

95 Ibid.

96 Education (Core Syllabus for Religious Education) Order (NI) 2007.

97 'Core Syllabus for Religious Education' (Department of Education 2007) 29–30: <[www.deni.gov.uk/publications/religious-education-core-syllabus](http://www.deni.gov.uk/publications/religious-education-core-syllabus)>.

98 'Statutory Curriculum' (Department of Education): <[www.education-ni.gov.uk/articles/statutory-curriculum#toc-0](http://www.education-ni.gov.uk/articles/statutory-curriculum#toc-0)>.

99 Richardson (n 94) 25–6.

All in all, the Christian focus of the religious education curriculum in state-funded schools resulting from the dominant influence of a relatively small band of religious organisations suggests that a 'narrow and incomplete'<sup>100</sup> approach to religion remains the norm in the Northern Ireland education system. There have been calls to reconsider and redraft the current core syllabus for religious education by a more representative drafting group so that awareness, mutual respect and critical thought about 'world religions and non-religious life stances' can be explored at all 'key stages' of educational attainment<sup>101</sup> in a more 'balanced and comprehensive'<sup>102</sup> fashion. We agree that to do so would enhance the right to freedom of thought, conscience and religion of minority belief pupils,<sup>103</sup> and we submit that it would also further enhance the right to education for humanity as we define that term.

### (C) THE EXEMPTION OF TEACHER RECRUITMENT FROM FAIR EMPLOYMENT LEGISLATION

There is an exemption from the prohibition against discrimination on the basis of religion contained in the Fair Employment and Treatment (Northern Ireland) Order 1998.<sup>104</sup> It allows the employing authority for a particular school, namely the Authority, the school Board or the CCMS, depending on the type of school, to discriminate on the basis of an applicant's religion for the purposes of teacher employment and recruitment.<sup>105</sup> The Court of Appeal in Northern Ireland has interpreted the term recruitment to include promotion in this context.<sup>106</sup> However, the Fair Employment Tribunal has made it clear that, where teachers are being selected for redundancy purposes, employing authorities are not entitled to rely on the exemption.<sup>107</sup> These decisions appear to be doctrinally consistent in so far as they interpret the exemption to apply only in relation to the administration of vacant teacher posts but not in respect of decisions relating to the retention of posts already held, but they underline the practical difficulties in operationalising an exemption of this kind.

National law in this area is supported at European Union level (for the time being) by an exemption for Northern Ireland from the Council Directive on Equal Treatment in Employment and Occupation.<sup>108</sup> That exemption reads:

In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.<sup>109</sup>

It has been suggested that the two arguments presented in the text of the Directive in favour of the exemption are 'at odds with the realities of the Northern Ireland school

100 Ibid 26.

101 Mawhinney et al (n 91) 67–8.

102 Richardson (n 94) 37.

103 Ibid.

104 Fair Employment and Treatment (NI) Order 1998, article 71, as amended by the Fair Employment and Treatment (Amendment) Regulations (NI) 2003, reg 30.

105 Ibid article 71(1), as amended by the Fair Employment and Treatment (Amendment) Regulations (NI) 2003, reg 30.

106 *Fynn and Debast v Malcolmson* [2007] NICA 56.

107 *Brudell v Board of Governors, Ballykelly Primary School* [2010] 161/09FET [9].

108 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [2000] OJ L303/16, Article 15(2).

109 Ibid.



system'.<sup>110</sup> It has also been suggested that a more convincing justification is 'that advanced by the Catholic Church regarding the need to maintain a Catholic ethos' in its schools.<sup>111</sup> Regardless, research published in 2002 found 'little evidence of any support' for change at any school level regarding the exemption, except for some of the teacher trade unions.<sup>112</sup> Most other 'educational interests' consulted during the research viewed the status quo as an 'inevitable consequence of an educational system that permits separate denominational schools', except for Catholic authorities who expressed support for the exception 'as a positive endorsement of diversity in education'.<sup>113</sup>

More recently, an attempt to repeal the exemption was made by two Members of the Legislative Assembly (MLAs) by way of a proposed amendment to the Employment Bill at Further Consideration Stage.<sup>114</sup> Their intervention was prompted by perceived 'prevarication' over the issue between the Department and the Office of the First Minister and deputy First Minister (OFMdFM).<sup>115</sup> Justifications advanced by MLAs in support of the amendment included the fact that there are already 'reasonable numbers of Protestant teachers in Catholic schools', even at headmaster level; that the exception may be linked to the annual oversupply of teachers from Northern Ireland's teacher training colleges;<sup>116</sup> and that there was evidence of cross-party agreement with regard to the proposal to abolish the exemption, buttressed by support from representatives of the CCMS as well as representatives from the controlled sector.<sup>117</sup> The alleged support of the CCMS suggests a change in its position since the 2002 research cited above. In addition, it was suggested during a debate on the amendment that the exemption is not used by any sector in practice.<sup>118</sup> However, those MLAs who opposed the amendment referred to a lack of public consultation on the issue, as well as insufficiently neutral debate.<sup>119</sup> It was also suggested that because OFMdFM had responsibility for equality legislation it would be more appropriate for that Office to introduce any proposed changes.<sup>120</sup> In the end, the arguments debated were rendered otiose because the amendment was halted by virtue of a petition of concern requiring cross-community support that was validly tabled against it.<sup>121</sup> This has been lamented by those in favour of the amendment, who have

110 Tony Gallagher and Laura Lundy, 'Religion, Education and the Law in Northern Ireland' in José Luis Martínez López-Muñiz et al (eds), *Religious Education in Public Schools: Study of Comparative Law* (Springer 2006) 181. The first few words of the provision suggest that the provision is necessary so as to prevent religious discrimination, yet its effect is actually to entrench that phenomenon.

111 Ibid.

112 Seamus Dunn and Tony Gallagher, 'The Teacher Exception Provision and Equality in Employment in Northern Ireland' (Equality Commission for Northern Ireland 2002) 29.

113 Ibid.

114 Employment Bill (2011–2016) [Notice of Amendments tabled on 17 February 2016 for Further Consideration Stage], cl 26(1A). Both of the MLAs were members of the Ulster Unionist Party.

115 Official Report (Hansard) 22 February 2016, vol 112, no 8, 67. OFMdFM has been renamed 'the Executive Office' by the Departments Act (NI) 2016, s 1(1), but we have used the former term to reflect its use during debates about the Employment Bill (2011–2016).

116 Namely, St Mary's University College Belfast (traditionally the Catholic option) and Stranmillis University College (traditionally the Protestant option).

117 Official Report (Hansard) 22 February 2016, vol 112, no 8, 66–8.

118 Ibid 66–7.

119 Ibid 69–71.

120 Ibid. Responsibility for equality matters has since been transferred to a Department for Communities established under the Departments Act (NI) 2016, s 1(7). See the Departments (Transfer of Functions) Order (NI) 2016, article 3(1)(b) and Sch 1, Pt 2.

121 Official Report (Hansard) 23 February 2016. The petition of concern was tabled by MLAs from Sinn Féin and the Social Democratic and Labour Party.

suggested that the Shared Education Act (NI) 2016 – discussed further below – is destined to fail for as long as the exemption continues to segregate the teaching workforce in Northern Ireland.<sup>122</sup> Like others,<sup>123</sup> we believe that the abolition of the exemption is long overdue. The parochialism it permits conflicts with the appreciation of diversity inherent in our conception of a right to education for humanity.

#### (D) THE INADEQUATE PROVISION OF ‘INTEGRATED’ EDUCATION

It was noted above that integrated education is defined in legislation as the education together of Protestant and Catholic pupils<sup>124</sup> and that the school Boards of integrated schools are required to use their best endeavours to ensure that ‘the management, control and ethos of the school are such as are likely to attract to the school reasonable numbers of both Protestant and Roman Catholic pupils’.<sup>125</sup> Our focus now turns to the Department’s duty ‘to encourage and facilitate the development of integrated education’.<sup>126</sup> After setting that statutory obligation in its political context, we explore the implications of recent court cases challenging the Department’s fulfilment of its duty.

Commitments to the furtherance of integrated education in Northern Ireland have formed part of several important political agreements. The Belfast (Good Friday) Agreement of 1998 recognised that an ‘essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiatives to facilitate and encourage integrated education and mixed housing’. The parties pledged ‘their continuing support’ for initiatives of this kind and undertook to ‘positively examine the case for enhanced financial assistance’ for the work of organisations involved.<sup>127</sup> More recently, the Stormont House Agreement of 2014 included a commitment by the UK government to make a large capital investment in integrated and shared education.<sup>128</sup> More recently still, the Fresh Start Agreement of 2015 provided that the £500m capital investment agreed in 2014 could also be used to support ‘shared housing projects’.<sup>129</sup> It appears that, while integrated education continues to be recognised as an important aspect of intergovernmental policy, over time its prominence has been diluted, with strategic commitments towards it having been divided between additional policy goals such as shared education and mixed housing.

122 Sandra Overend MLA, ‘Ulster Unionist Attempt to End Lawful Discrimination in Teacher Recruitment Blocked by Nationalists’ (23 February 2016): <<http://sandraoverend.co.uk/ulster-unionist-attempt-to-end-lawful-discrimination-in-teacher-recruitment-blocked-by-nationalists>>.

123 ‘A Single Equality Bill for Northern Ireland’ (Northern Ireland Human Rights Commission, September 2004) para 54: <[www.nihrc.org/documents/advice-to-government/2004/single-equality-bill-for-northern-ireland-september-2004.pdf](http://www.nihrc.org/documents/advice-to-government/2004/single-equality-bill-for-northern-ireland-september-2004.pdf)>; ‘Teachers’ Exception’ (Equality Commission for Northern Ireland): <[www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Related-links/Teachers-exception-%281%29%29](http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Related-links/Teachers-exception-%281%29%29)>.

124 Education Reform (NI) Order 1989, article 64(1).

125 Ibid article 66(2).

126 Ibid article 64(1).

127 ‘The Belfast Agreement’ (Northern Ireland Office, 10 April 1998): <[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf)>, Pt VI, para 13.

128 ‘The Stormont House Agreement’ (Northern Ireland Office, 23 December 2014): <[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf)>.

129 ‘A Fresh Start: The Stormont Agreement and Implementation Plan’ (Northern Ireland Office, 17 November 2015): <[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479116/A\\_Fresh\\_Start\\_-\\_The\\_Stormont\\_Agreement\\_and\\_Implementation\\_Plan\\_-\\_Final\\_Version\\_20\\_Nov\\_2015\\_for\\_PDF.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf)>.

This perception is supported by litigation challenging the ostensibly lacklustre approach of the Department of Education towards integrated education proposals. In an application for judicial review by Drumragh Integrated College, where the college claimed that the Department had failed to fulfil its duty to encourage and facilitate the development of integrated education after it refused a development proposal submitted by the college to increase pupil enrolment figures over a five-year period, and also in relation to the Department's own development planning policy, the court reached a decision in the college's favour on both grounds.<sup>130</sup> Contrary to the Department's claim that its duty was not only directed towards formally recognised integrated schools, nor indeed any 'particular sector',<sup>131</sup> Treacy J held that integrated education is 'a standalone concept' that 'plainly envisages education together at the same school'<sup>132</sup> and 'not education that is delivered by a partisan board'.<sup>133</sup> The learned judge also said that the Department's area-based planning policy, which was focused on 'need', created an additional difficulty for the integrated education sector, thereby accepting the applicant's argument that the effect of the Department's policy was to disadvantage the college by requiring growth in the integrated sector, which the college fell within, 'accompanied by an equivalent contraction in the maintained and controlled sectors'.<sup>134</sup> Significantly, in the context of a case pursued in the public interest (as the Minister had in fact agreed to retake his impugned decision and make certain concessions),<sup>135</sup> the court found that the Department needed to be alive to its duty to encourage and facilitate the development of integrated education 'at all levels, including the strategic level'.<sup>136</sup> Nonetheless, subsequent to the court's judgment, the Minister again rejected the development proposal made by Drumragh Integrated College.<sup>137</sup> The decision stated that 'due regard' had been given to the Department's duty as interpreted by the court, 'in the context of other duties',<sup>138</sup> but an application for leave to challenge the Minister's latest decision is currently before the High Court.<sup>139</sup>

In another recent application for judicial review by Maighread Cunningham, a primary school pupil, the court at first instance quashed ministerial decisions to refuse to permit the applicant's school to transform from a Catholic maintained school into an integrated school and to approve a proposal by the CCMS to close her school.<sup>140</sup> Treacy J held that 'the Minister clearly and mistakenly made both impugned decisions on the basis that the school was under financial stress'<sup>141</sup> and that he had therefore misdirected himself.<sup>142</sup> Perhaps the most noteworthy aspect of this case is that it concerned the first ever proposal to transform a Catholic school into an integrated school since it became possible

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130 *Drumragh Integrated College's Application* [2014] NIQB 69.

131 *Ibid* [36].

132 *Ibid* [50].

133 *Ibid* [53].

134 *Ibid* [22].

135 *Ibid* [10].

136 *Ibid* [60].

137 'Development Proposal No 226 – To Increase Approved Enrolment at Drumragh Integrated College from 580 to 750 Pupils' (Department of Education, 17 September 2014): <[www.deni.gov.uk/publications/dp-226-drumragh-integrated-college-omagh](http://www.deni.gov.uk/publications/dp-226-drumragh-integrated-college-omagh)>.

138 *Ibid*.

139 'Integrated Education' *The PILS Project Newsletter* (29 February 2016): <<http://us1.campaign-archive2.com/?u=c2f47bb0612afef59454494f0&cid=b7338cac3f&e=82afc608b3>>.

140 *Cunningham's (Maighread) (A Minor) Application* [2015] NIQB 25.

141 *Ibid* [12].

142 *Ibid* [17].

to do so in 1989.<sup>143</sup> It had been considered an unlikely prospect, 'given the traditions and ethos of the Catholic church in regard to education'.<sup>144</sup> Treacy J acknowledged that if approval for the transformation proposal had been given, 'its galvanising effect could have had potentially very significant positive implications' for the integrated education sector,<sup>145</sup> constituting 'a potentially ground-breaking development boost'.<sup>146</sup>

The Department appealed Treacy J's decision, arguing that documents which informed the Minister's decisions included accurate statements of the school's relatively stable financial position which rebutted allegations of any mistaken factual basis for them.<sup>147</sup> Significantly, counsel for the Department also submitted that while 'the judge appeared to be attracted by the school offering itself as a pioneering example of transformation from Catholic status to integrated status', the Minister's rejection of the proposal was supported by a low level of interest expressed by children designated as Protestant recorded for the prospective school years 2016 to 2018.<sup>148</sup> It was further submitted that only three expressions of interest were in fact recorded which, while meeting the initial 10 per cent minimum threshold, 'would fall well below the 30% threshold needed for integrated enrolment in the long term'.<sup>149</sup> We would have thought this unsurprising and, indeed, in line with the rationale for having a lower initial threshold, namely that other pupils could be encouraged to come forward over time, but this does not appear to have been raised in argument. The Court of Appeal was persuaded to remit the case to the judge at first instance, principally because his judgment did not engage with those submissions containing accurate records of the school's budgetary position which weighed 'significantly in favour of the Minister's decision'.<sup>150</sup> A new decision has not yet been handed down.

The Department's response to the *Drumragh Integrated College* case has been to commission an independent review of the 'planning, growth and development of integrated education' as it was defined by Treacy J.<sup>151</sup> There is obvious tension between that definition, which emphasises that integrated education is 'a standalone concept',<sup>152</sup> and the Department's stated interest in considering 'how to develop a more integrated education system in its widest sense',<sup>153</sup> the latter being akin to its judicially rejected argument in favour of a non-formally recognised and non-sectoral interpretation of the concept.<sup>154</sup> It is also remarkable that the terms of reference for the review pay no regard to Maighread Cunningham's case, despite the decision at first instance having been handed down many months prior to the launch of the review. Indeed, the terms of reference state that, 'to date', the process of transforming existing schools to integrated status 'has only been utilised by controlled schools',<sup>155</sup> without making any reference to Cunningham's

143 Education Reform (NI) Order 1989, Pt VI.

144 *Re Daly and Others* (NIQB, 5 October 1990) (MacDermott LJ), unreported.

145 *Cunningham's (Maighread) (A Minor) Application* [2015] NIQB 25 [8].

146 *Ibid* [10].

147 *Department of Education v Maighread Cunningham* [2016] NICA 12.

148 *Ibid* [58].

149 *Ibid*.

150 *Ibid* [92].

151 'Terms of Reference – Review of Integrated Education' (Department of Education, 27 January 2016): <[www.deni.gov.uk/sites/default/files/publications/de/terms-of-reference-review-of-the-planning-growth-and-development-of-integrated-education.pdf](http://www.deni.gov.uk/sites/default/files/publications/de/terms-of-reference-review-of-the-planning-growth-and-development-of-integrated-education.pdf)> paras 1–2.

152 *Drumragh Integrated College's Application* [2014] NIQB 69 [50].

153 'Terms of Reference' (n 151) para 2.

154 *Drumragh Integrated College's Application* [2014] NIQB 69 [36].

155 Terms of Reference' (n 151) para 10.

application and the mould-breaking circumstances it involved. Moreover, the terms of reference include a review of 'the effectiveness of the processes for statutory transformation and the establishment of new integrated schools'.<sup>156</sup> The terms of the review dovetail with the Department's general orientation towards supporting 'naturally integrated' or 'super mixed' schools and shared education policies.<sup>157</sup> This strengthens the view that the review panel's objective to 'develop longer-term proposals to ensure [that] the nature and structure of integrated education remain fit for purpose in light of the significant societal changes in the twenty-five years since the 1989 Order'<sup>158</sup> indicates a drop in support for integrated education by governmental actors, despite the existence of a continuing legal duty to encourage and facilitate it. Tellingly, 'the vast majority of responses (87%)' to the review's call for evidence 'felt that government has not been sufficiently pro-active in supporting development of integrated education'.<sup>159</sup> This confirms our view that it is vital for governmental actors to revisit the foundational arguments in favour of planned integrated education over any other form.<sup>160</sup> The expected introduction of a Private Members' Bill in the Assembly aimed at furthering integrated education provision should be treated as an opportunity to revitalise governmental enthusiasm towards its potential.<sup>161</sup>

#### (E) THE PLAN TO PROVIDE FOR 'SHARED' EDUCATION

A Ministerial Advisory Group (the Group) was appointed in 2012 by the Minister of Education 'to explore and bring forward recommendations on how to advance shared education' in Northern Ireland.<sup>162</sup> The Group agreed to adopt a definition of shared education as education involving:

... two or more schools or other educational institutions from different sectors working in collaboration with the aim of delivering educational benefits to all learners, promoting the efficient and effective use of resources, and promoting equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.<sup>163</sup>

The Group reported in 2013, prefacing its recommendations with the view that integrated schools should not be seen as the 'preferred option' in relation to plans to advance shared education.<sup>164</sup> Instead, the Group saw integrated schools 'as a sector, rather than a model'

<sup>156</sup> Ibid para 21(b)(iii).

<sup>157</sup> Ibid paras 15–17.

<sup>158</sup> Ibid para 21(g).

<sup>159</sup> 'A Summary Analysis of Responses to the Independent Review of Integrated Education Call for Evidence' (Department of Education, 28 June 2016) 5: <[www.education-ni.gov.uk/publications/summary-analysis-responses-independent-review-integrated-education-call-evidence](http://www.education-ni.gov.uk/publications/summary-analysis-responses-independent-review-integrated-education-call-evidence)>. The independent review group, comprising Mr Colm Cavanagh and Professor Margaret Topping, delivered its report to the Minister of Education in September 2016, but as yet it has not published.

<sup>160</sup> A E C W Spencer, 'Arguments for an Integrated School System' in Osborne et al (n 82) 99.

<sup>161</sup> 'Alliance Members Table Private Members' Bills for Consideration' (Alliance Party, 12 May 2016): <<http://allianceparty.org/article/2016/0010335/alliance-members-table-private-members-bills-for-consideration>>.

<sup>162</sup> 'Ministerial Advisory Group on Advancing Shared Education: Terms of Reference' (Department of Education, 19 July 2012): <[www.deni.gov.uk/sites/default/files/publications/de/shared-education-advisory-group-terms-of-reference.pdf](http://www.deni.gov.uk/sites/default/files/publications/de/shared-education-advisory-group-terms-of-reference.pdf)>.

<sup>163</sup> Paul Connolly, Dawn Purvis and P J O'Grady, 'Advancing Shared Education' (Ministerial Advisory Group Report, March 2013) 103–4: <[http://pure.qub.ac.uk/portal/files/14596498/Filetoupload\\_382123\\_en.pdf](http://pure.qub.ac.uk/portal/files/14596498/Filetoupload_382123_en.pdf)>. The language used in this definition now reflects 'the purpose of shared education' as defined by the Shared Education Act (NI) 2016, s 1(2).

<sup>164</sup> Connolly et al (n 163) 107.

of shared education and advocated against ‘actively promoting one sector over other sectors’.<sup>165</sup> While expressing its implicit disapproval of the Department’s statutory duty to encourage and facilitate integrated education,<sup>166</sup> the Group did not overtly recommend its repeal or amendment. Instead, the Group’s recommendations proposed the advancement of shared education by various initiatives without engaging substantively with the relationship between those policies and the Department’s existing statutory duty. This relationship was not then clarified before the subsequent passage of a duty on the Authority to encourage, facilitate and promote shared education.<sup>167</sup> The potential for legal confusion which this creates is regrettable.

In September 2015 the Department published a policy document setting out its vision of ‘the way forward’ for shared education, openly based on the Group’s report.<sup>168</sup> The document bluntly asserted that the Department’s duty to facilitate and encourage integrated education would ‘not be impacted’ by the policy proposals<sup>169</sup> and envisaged ‘that a proportion of schools may move along the continuum to a more integrated model’.<sup>170</sup> The Department has started the implementation of its policy through the Shared Education Act (NI) 2016, which defines the concept of shared education,<sup>171</sup> confers a power on certain education bodies to encourage and facilitate shared education,<sup>172</sup> and commences the above-mentioned duty on the Authority to encourage, facilitate and promote shared education.<sup>173</sup> The Act places the Department under an identical duty to encourage, facilitate and promote shared education (which differs from the initial proposal to confer upon it a discretionary power to do so).<sup>174</sup> Furthermore, the Act imposes a duty on education bodies to ‘consider’ shared education when ‘developing, adopting, implementing or revising policies, strategies and plans’ and when ‘designing and delivering public services’,<sup>175</sup> and requires the Department to carry out biennial reviews of the Act’s operation.<sup>176</sup> These legislative foundations underpin shared education to a far greater extent than is the case for integrated education. This shift in focus is a matter of considerable regret to advocates of integration, who believe that the sharing of classes, facilities, teachers and buildings merely marks an acceptance that Northern Ireland schools are destined to remain separated along religious lines.<sup>177</sup> Indeed, some have said that the policy in favour of shared education ‘represents a failure to confront society’s most glaring needs’, calling it ‘segregation with a smiley mask on’ opted for as a means of

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165 Ibid 108.

166 Ibid 107–8.

167 Education Act (NI) 2014, s 7.

168 ‘Sharing Works: A Policy for Shared Education’ (Department of Education, September 2015): <[www.deni.gov.uk/sites/default/files/publications/de/shared-education-policy.pdf](http://www.deni.gov.uk/sites/default/files/publications/de/shared-education-policy.pdf)>.

169 Ibid 12.

170 Ibid 16.

171 Shared Education Act (NI) 2016, s 2(2).

172 Ibid s 4.

173 Ibid s 8; Education Act (NI) 2014, s 7.

174 Shared Education Act (NI) 2016, s 3.

175 Ibid s 6.

176 Ibid s 7.

177 Kathryn Torney, ‘The Shift from Integrated to Shared’ *The Detail* (6 June 2014): <[www.thedetail.tv/articles/the-shift-from-integrated-to-shared](http://www.thedetail.tv/articles/the-shift-from-integrated-to-shared)>.

avoiding resistance to genuine integration from influential religious interest groups.<sup>178</sup> These concerns should be taken into account by both the independent review of integrated education discussed above<sup>179</sup> and by the Assembly during its consideration of the Private Members' Bill on integrated education expected to come before it this term.<sup>180</sup> We hope that our proposal relating to education for humanity will influence both those processes.

#### (F) THE INFLUENCE OF ACADEMIC SELECTION IN THIS SPHERE

Legislation to prohibit the use of academic selection tests for post-primary pupils in Northern Ireland was stalled by the St Andrew's Agreement in 2006 and, until very recently, the relevant Minister had merely refused to condone regulations permitting academic selection or a central transfer procedure.<sup>181</sup> Departmental guidance which education bodies must 'have regard to',<sup>182</sup> meaning that they must give 'active and receptive consideration' to it and, where applicable, record their reasons for departing from it,<sup>183</sup> strongly discouraged the use of criteria based on academic ability,<sup>184</sup> providing a menu of non-academic selection criteria for them to draw upon instead.<sup>185</sup> However, in the absence of political consensus on the merits of academic selection, and the related absence of will among a majority of the Northern Ireland Assembly to prohibit it, academic selection tests continue to be carried out by most grammar schools for applicants at the age of 10 or 11. The current Education Minister has since said that 'academic selection is here to stay', while expressing his willingness to consider ways of improving the system.<sup>186</sup> Acting upon this commitment, and reversing the policy of his predecessors, the current Minister has issued revised guidance which now permits schools 'to use academic selection as the basis for admission of some or all of their pupils'.<sup>187</sup>

178 Patrick McEvoy, 'Response to the Department of Education's Consultation on Shared Education' (Humanist 2015): <[www.humanistni.org/dynamic\\_content.php?id=125](http://www.humanistni.org/dynamic_content.php?id=125)>. For a more enthusiastic account of shared education, which explores its underpinning theoretical framework and considers a detailed case study, see Gavin Duffy and Tony Gallagher, 'Shared Education in Contested Spaces: How Collaborative Networks Improve Communities and Schools' (2016) *Journal of Educational Change* 1.

179 See text at n 151ff.

180 See text at n 161ff.

181 Laura Lundy et al, 'Education Reform in Northern Ireland: A Human Rights Review' (Northern Ireland Human Rights Commission, 8 April 2012) 11: <[www.nihrc.org/uploads/publications/Education\\_Reform\\_in\\_Northern\\_Ireland\\_A\\_Human\\_Rights\\_Review.pdf](http://www.nihrc.org/uploads/publications/Education_Reform_in_Northern_Ireland_A_Human_Rights_Review.pdf)>.

182 Education (NI) Order 1997, article 16(B), as amended by the Education (NI) Order 2006, Article 30, and the Education (NI) Act 2014, Sch 3, para 1(1).

183 *JR 56's Application* [2011] NIQB 78, [12].

184 'Post-Primary Transfer Policy from September 2015' (Department of Education, 10 September 2015) para 18: <[www.deni.gov.uk/sites/default/files/publications/de/post-primary-transfer-policy-from-september-2015.pdf](http://www.deni.gov.uk/sites/default/files/publications/de/post-primary-transfer-policy-from-september-2015.pdf)>.

185 *Ibid* para 16.

186 'Peter Weir: Academic Selection Safe, and I Want to Improve It' *Belfast Newsletter* (27 May 2016): <[www.newsletter.co.uk/news/northern-ireland-news/peter-weir-academic-selection-safe-and-i-want-to-improve-it-1-7403671](http://www.newsletter.co.uk/news/northern-ireland-news/peter-weir-academic-selection-safe-and-i-want-to-improve-it-1-7403671)>.

187 'Guidance to Primary School Principals, Post-Primary Schools' Boards of Governors and Principals, and the Education Authority on the Process of Transfer from Primary to Post-Primary School from September 2016' (Department of Education, 7 September 2016): <[www.education-ni.gov.uk/publications/post-primary-transfer-guidance-september-2016](http://www.education-ni.gov.uk/publications/post-primary-transfer-guidance-september-2016)>. For further information on the recent history of academic selection policy, see Caroline Perry, 'Academic Selection: A Brief Overview' (Northern Ireland Assembly Research and Information Service, 8 September 2016): <[www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/education/4816.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/education/4816.pdf)>.

While there is a range of research raising concerns about the current ‘system’,<sup>188</sup> the most significant aspect of the status quo for present purposes is its perpetuation of religious segregation. In the ‘policy vacuum’ pertaining at the moment,<sup>189</sup> schools have adopted two separate sets of admissions tests devised by two separate organisations. The Association for Quality Education (AQE), comprising mostly grammar schools with a Protestant ethos, runs one set of tests, and Granada Learning (GL) runs another set of tests for the Post-Primary Transfer Consortium (PPTC) which are recognised mainly by schools in the Catholic sector.<sup>190</sup> It has recently emerged that the two assessment providers are being formally encouraged by the Department to devise a common test by 2017 under the leadership of Professor Peter Tymms, but for the time being the tests continue to be run separately. A small number of schools allow children to apply with the results of either test<sup>191</sup> and some integrated schools have recently chosen to introduce milder academic selection criteria than those deployed by the two main assessment providers,<sup>192</sup> but there is widespread ‘dismay amongst commentators, parents and teachers who agree that the current system is chaotic’.<sup>193</sup> That dismay was recognised by the Ministerial Advisory Group referred to above,<sup>194</sup> which conceded that their recommendations on advancing shared education were limited by the ‘high stakes and currently unregulated’ academic selection processes in present use, calling the available routes ‘divisive, archaic and not fit for purpose’.<sup>195</sup> It is similarly clear to us that the right to education for humanity is inhibited by the present arrangements for allocating children to schools providing secondary education, which we consider to be inconsistent with our conception of the right’s basis in impartiality and equality. We further consider that the Department’s warning to schools in relation to the potential for legal challenges to unregulated admissions testing is well founded.<sup>196</sup>

### The way forward

The dangers inherent in neglecting to expose children to education for humanity should be clear for all to see, both generally and more particularly in relation to Northern Ireland. We can point to many conflicts around the world where religious differences play a significant part in dividing peoples, often as proxies for other differences based on ethnic origin, tribal background, political allegiance or social class. Differences between Protestants and Catholics in Northern Ireland, between Shias and Sunnis in Iraq, between Jews and Muslims in Palestine and between Hindus and Sikhs in India have all contributed to the prolongation of conflicts that have entailed the loss of countless lives, terrible personal suffering and huge social upheavals. We are not naïve enough to suppose that an

188 See, for example, Tony Gallagher, ‘The Impact of Devolution on Education Policy: Two Case Studies’ in Caitlin Donnelly, Penny McKeown and Robert Osborne (eds), *Devolution and Pluralism in Northern Ireland* (Manchester UP 2006) 139–48.

189 Derek Birrell and Deirdre Heenan, ‘Policy Style and Governing without Consensus: Devolution and Education Policy in Northern Ireland’ (2013) 47 *Social Policy and Administration* 765, 773.

190 *Ibid.*

191 Lundy et al (n 181).

192 Rebecca Black, ‘Four Integrated Schools Opt for Academic Selection in Defiance of Northern Ireland Education Minister O’Dowd’ *Belfast Telegraph* (12 February 2016): <[www.belfasttelegraph.co.uk/news/northern-ireland/four-integrated-schools-opt-for-academic-selection-in-defiance-of-northern-ireland-education-minister-odowd-34446587.html](http://www.belfasttelegraph.co.uk/news/northern-ireland/four-integrated-schools-opt-for-academic-selection-in-defiance-of-northern-ireland-education-minister-odowd-34446587.html)>.

193 Birrell and Heenan (n 189).

194 See text at n 162ff.

195 Connolly et al (n 163) 111.

196 ‘Post-Primary Transfer Policy’ (n 184) para 19 and Annex 1; ‘Guidance to Primary School Principals (n 187) Annex 1.



obligation on states to provide all persons with education for humanity will settle all such conflicts and prevent new ones from emerging, but we do maintain that, by making all people, especially children, more aware of the role played by religious differences in the perpetuation of conflicts, states are more likely to be able to reduce the intensity of the conflicts and promote compromise between opposing views. In particular, parents should not be allowed to restrict their children's access to pluralistic religious education.

As far as the particular case of Northern Ireland is concerned, we share the view of Emerson and Lundy that the public interest in guaranteeing children's rights to education is even more compelling in a society which is making the transition from violence to peace.<sup>197</sup> But while those authors argue primarily for a rights-based approach to education, including the child's right to help determine the nature of the curriculum,<sup>198</sup> we go further in suggesting that the right to education for humanity requires more than just education about human rights. While maintaining that adherence to human rights principles is a *sine qua non* of an approach based on humanity, we claim that the latter entails in addition a commitment to peaceful co-existence, to the celebration of diversity and to the mutual appreciation of alternative points of view. In Northern Ireland, where the influence of religious organisations is still manifest in many dimensions of a school's activities, it is crucial that the narrow-mindedness which such influence can instil in pupils is countered by a requirement to expose all children to their status as citizens of the world. As they are destined to grow up in an ever more globalised environment where they can communicate at the press of a button with countless others, it is vital that they be equipped to better understand all societies, in particular the nature and diversity of religious beliefs and cultural practices. Guaranteeing their right to education for humanity will dispose children to appreciate the value in difference rather than confine them to their own aleatory heritage.

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197 Lesley Emerson and Laura Lundy, 'Education Rights in a Society Emerging from Conflict: Curriculum and Student Participation as a Pathway to the Realization of Rights' in Swadener et al (n 40) 19–38, 20.

198 Ibid 21.